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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 8910
RESTON, VA 20195

EXAMINER	
SCHWARTZ, DARREN B	

ART UNIT	PAPER NUMBER
2435	

MAIL DATE	DELIVERY MODE
09/03/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/528,787	**Applicant(s)** KSONTINI ET AL.	
	Examiner DARREN SCHWARTZ	**Art Unit** 2435	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
 a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

 NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: *1-9*.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Beemnet W Dada/
Primary Examiner, Art Unit 2435

Continuation of 11. does NOT place the application in condition for allowance because:

The Examiner acknowledges the amendments to claim 1. The amendments to the claim necessitates further search and consideration of the art. Applicant's arguments filed have been fully considered but they are not persuasive.

Applicant argues on page 6 of REMARKS, Sasaki fails to disclose, teach or fairly suggest "the cryptogram including an identifier belonging to the second device and the unique pairing key."

The Examiner disagrees and directs attention to the paragraph preceding this argument wherein the applicant states the following: "In Sasaki[,] A common key is generated in accordance with a common key generation program. The generated common key is registered (stored) in the external storage device 18 in correspondence with an identifier (step 101). The identifier is indicated by i, and a common key corresponding to the identifier i is taken as a common key i." "The ciphertext i, together with the identifier I and the first public key/secret key generation program, is transmitted from the transmitter 10 to the receiver 20 (step 103). The Examiner further notes that Figure 4, element 103 of Sasaki states, in entirety, "TRANSMIT FIRST KEY, GENERATION PROGRAM, IDENTIFIER i, AND CIPHERTEXT i (emphasis applied).

Therefore, it appears that Sasaki establishes the teachings of "an identifier belong to the second device and the unique pairing key" by establishing, at least, the first key and an identifier i. As per the cryptogram, Figure 4, element 103 teaches the transmission of CIPHERTEXT i. One of ordinary skill in the art would conquer that ciphertext is contained within a cryptogram.

Applicant further argues that Sasaki is silent as to teaching "the cryptogram being encrypted by a secret key common to all the first devices."

The Examiner disagrees. Sasaki establishes the teachings of encrypting the cryptogram by using "a secret key common to all the first devices" in Figure 3 wherein the "FIRST PUBLIC KEY" is utilized to encipher the "common key." Additionally, column 7, lines 55-59, "… using the first public key I transmitted from the receiver 20 in accordance with a first public key system encryption program (step 105). The enciphered common key …" Finally, column 8, lines 42-50 establishes: "In the above-mentioned first embodiment, the common key I is used to encipher the plaintext and to decipher the ciphertext. Alternatively, it is also possible to encipher plaintext using a public key in a public key system …" The Examiner sustains.

Applicant argues Kustin fails to teach or fairly suggest "searching for a free location among the locations reserved for the unique pairing key in the first device … storing the unique pairing key in the first device, the unique pairing key used to pair with second device." Applicant states the keys of Kustin are neither transmitted nor received. "Rather, these keys correspond with the source of transmission and are used to encrypt the packet 32 that is transmitted to the transceiver 28."

Firstly, in response to applicant's argument, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In particular, Kuskin is applied as directed to the storing of ciphering keys when pairing two devices. For at least this reason, the Examiner maintains Kuskin.

The fact that the Examiner may not have specifically responded to any particular arguments made by Applicant and Applicant's Representative, should not be construed as indicating Examiner's agreement therewith..